

STATE OF WASHINGTON

Phone: (360) 725-7000

MIKE KREIDLER  
STATE INSURANCE COMMISSIONER  
**DECLARATION OF MAILING**

I declare under penalty of perjury  
under the laws of the State of  
Washington that on the date listed  
below, I mailed or caused delivery  
of a true copy of this document to  
parties listed below  
DATED this 3rd day of Nov. 2006.  
at Tumwater, Washington.

Signed: Wendy Galloway



OFFICE OF  
INSURANCE COMMISSIONER  
HEARINGS UNIT

Fax: (360) 664-2782

FILED

2006 NOV -3 P 2:05

Patricia D. Petersen  
Chief Hearing Officer  
(360) 725-7105

Hearings Unit, DIC  
Patricia D. Petersen  
Chief Hearing Officer  
Wendy Galloway  
Paralegal  
(360) 725-7002  
Wendyg@OIC.wa.gov

BEFORE THE STATE OF WASHINGTON  
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:

**KENNETH I. TOBEY, INC.**

Licensee.

No. D06-179

FINAL ORDER TERMINATING  
PROCEEDING

To: Kenneth I. Tobey, Inc.  
11100 NE 8<sup>th</sup> Street, Suite 420  
Bellevue, Washington 98004

& Kenneth I. Tobey, Inc.  
6700 SW 105<sup>th</sup> Ave., Ste. 110  
Beaverton, Oregon 97008

Michael York, Esquire  
3930 Premier Parkway  
Duluth, Georgia 30091

Carlos Lidsky, Esquire  
Lidsky, Vaccaro and Montes  
145 E. 49<sup>th</sup> Street  
Hialeah, Florida 33013

Copy To: Mike Kreidler, Insurance Commissioner  
Mike Watson, Chief Deputy Commissioner  
Jim Odiome, Deputy Commissioner for Company Supervision  
Carol Sureau, Deputy Commissioner, Legal Affairs  
Charles Brown, Senior Staff Attorney, Legal Affairs  
Post Office Box 40255  
Olympia, Washington 98504-0255

Kenneth I. Tobey, Inc. (KIT) holds Washington licenses to conduct business as an insurance agent, insurance broker, managing general agent, and non-resident



FINAL ORDER TERMINATING PROCEEDING  
NO. D06-179  
Page 2

insurance broker. On May 3, 2006, an Order Revoking Licenses was entered by the Insurance Commissioner.

On May 19, 2006, Robert Redican, President of KIT, filed on behalf of Kenneth I. Tobey, Inc., a Request for Hearing and that a recommended decision first be entered by an administrative law judge from the Office of Administrative Hearings. On May 31, 2006, this matter was transferred to the Office of Administrative Hearings for review. The Insurance Commissioner appeared pro se by and through Charles Brown, Senior Staff Attorney for Legal Affairs.


A prehearing conference was held on July 26, 2006, setting a hearing date of November 29, 2006. Prior to the scheduled hearing, Michael York, on behalf of KIT, filed a letter withdrawing KIT'S request for a hearing. In that letter, KIT agreed to surrender the insurance license(s) and that all operations requiring a license have ceased. A copy of the letter dated October 23, 2006 is attached hereto and is by this reference incorporated herein.

On November 1, 2006, an Initial Order Dismissing Proceeding Due to Withdrawal was entered by Robert C. Krabill, Lead Administrative Law Judge. Accordingly, the hearings file was transferred to the undersigned to enter a Final Order.

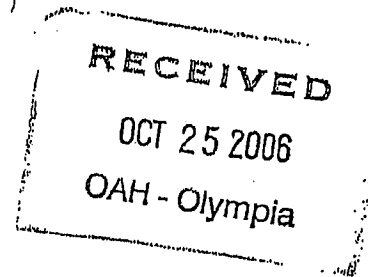
Based upon the above activity:

**IT IS HEREBY ORDERED** that this proceeding, Docket No. D06-179, is hereby terminated.

ENTERED this 3<sup>rd</sup> day of November, 2006, at Tumwater, Washington.



PATRICIA D. PETERSEN  
Chief Hearing Officer



PC General Agency, Inc.  
3039 Premiere Parkway, Suite 100  
Duluth, Georgia 30097

October 23, 2006

Office of Administrative Hearings  
Attn: Honorable Robert C. Krabill  
2420 Bristol Court SW, Third Floor  
Olympia, WA 98504-2489  
Fax: (360) 586-6563

SENT BY FAX & FedEx

Chuck Brown, Department Representative  
Staff Attorney, Legal Affairs  
Office of Insurance Commissioner  
5000 Capital Blvd.  
Tumwater, WA 98504-0255  
Fax: (360) 586-0152

RE: **Kenneth I. Tobey, Inc.**

Sirs:

In accordance with the attached letter from Carlos Lidsky to Christina Beusch dated October 20, 2006, Kenneth I. Tobey, Inc. is hereby withdrawing its request for a hearing to appeal the OIC's revocation of its insurance license number D06-179.

Also, in accordance with Mr. Lidsky's above referenced correspondence, contemporaneously we are surrendering the insurance license(s) of Kenneth I. Tobey, Inc. Although we are unable to locate the physical license(s) at this moment, we have ceased all operations for which a license would be required. We will forward them as soon as they are located.

Respectfully

A handwritten signature in black ink, appearing to be 'Michael York'.

Michael York

Cc: Carlos Lidsky, Esq.

p (800) 241-3511

f (678) 475-1629

[www.pcgroupholdings.com](http://www.pcgroupholdings.com)



OFFICE OF  
INSURANCE COMMISSIONER

In the Matter of )  
 )  
Kenneth I. Tobey, Inc., )  
 )  
Licensee. )  
 )

No. D 06 - 179  
ORDER REVOKING LICENSES

To: Kenneth I. Tobey, Inc.  
11100 NE 8<sup>th</sup> Street, Suite 420  
Bellevue, WA 98004

Kenneth I. Tobey, Inc.  
6700 SW 105<sup>th</sup> Ave. Suite 110  
Beaverton, OR 97008

**IT IS ORDERED AND YOU ARE HEREBY NOTIFIED** that your license is **REVOKED**, effective May 24, 2006, pursuant to RCW 48.17.530, RCW 48.17.540(2), and RCW 48.31.141(2).

**THIS ORDER IS BASED ON THE FOLLOWING:**

1. Kenneth I. Tobey, Inc. ("KIT" or "Licensee" hereafter) holds Washington licenses to conduct business as an insurance agent, insurance broker, managing general agent, and non-resident insurance broker.
2. At all times material hereto, KIT was appointed as managing general agent of Cascade National Insurance Company ("Cascade"). By Order of Liquidation and Approval of Plan of Liquidation entered in Thurston County Superior Court Cause No. 04-2-02427-4 on November 4, 2005, the Court declared Cascade to be insolvent and ordered the Statutory Receiver of Cascade to liquidate Cascade's business. KIT has violated RCW 48.31.141 by failing and refusing to remit to Cascade's Statutory Receiver premiums owed by KIT to Cascade National Insurance Company since the date of the declaration of Cascade's insolvency, which amounts are substantially overdue and exceed \$337,182.16.
2. By Stipulation and Consent Order D04-01, entered January 9, 2004, KIT and its former owner admitted that they had failed to promptly pay insurance premiums received in a fiduciary capacity in violation of RCW 48.17.480 and that they had failed to account for and maintain insurance premiums or return premiums in an account separate from other business and personal funds in violation of RCW 48.17.600. Said Order requires KIT to comply with the requirements of RCW 48.17.480 and RCW 48.17.600 and further provides that failure to so comply shall constitute grounds for the automatic and immediate revocation of KIT's insurance agent license.

## ORDER REVOKING LICENSES

No. D 06 - 179

Page 2

3. In early April, 2006, the OIC learned that KIT's separate premium trust account was "out of trust" and that the funds in KIT's premium trust account together with the receivables that KIT expected to receive for premiums owed to KIT by producing agents were insufficient as of the end of March 2006, by approximately \$708,036, to cover KIT's premium obligations to the insurers it represents. The OIC also learned that the primary reason KIT's premium trust account is "out of trust" and insufficient to pay premiums due insurers is that KIT has been transferring funds from its premium trust account to its operating account without regard for the actual commissions earned and collected. For example, the OIC learned that KIT recently transferred approximately \$72,000 from its premium trust account to its operating account in order to cover its March payroll even though KIT did not have in the premium trust account at that time \$72,000 in commissions owed to KIT. In short, KIT has been "borrowing" future commissions that KIT expects to receive from funds belonging to others that KIT holds as a fiduciary in its premium trust account.

4. By failing to promptly pay insurance premiums received in a fiduciary capacity to the parties entitled thereto and by transferring and commingling into its operating account premium trust account funds held by KIT for others in a fiduciary capacity, KIT violated Order No. D04-1, RCW 48.17.480, RCW 48.17.600 and WAC 284-12-080.

By reason of Licensee's conduct, and its violations of the Insurance Code, Kenneth I. Tobey has shown itself to be, and is so deemed by the Commissioner, untrustworthy and a source of injury and loss to the public and not qualified to hold any insurance license in the State of Washington. Accordingly, the licenses of Kenneth I. Tobey, Inc. are revoked pursuant to RCW 48.17.530, RCW 48.31.141, and RCW 48.17.540.

**IT IS FURTHER ORDERED** that you return your insurance license certificates to the Commissioner on or before the effective date of the revocation of your licenses, as required by RCW 48.17.530(4).

**NOTICE CONCERNING YOUR RIGHT TO A HEARING.** Please note that a detailed summary of your right to contest this Order is attached. Briefly, if you are aggrieved by this Order, RCW 48.04.010 permits you to demand a hearing. Pursuant to that statute and others, you must demand a hearing, in writing, within 90 days after the date of this Order, which is the day it was mailed to you, or you will waive your right to a hearing. Your demand for a hearing must specify briefly the reasons why you think this Order should be changed. If your demand for a hearing is received by the Commissioner before the effective date of the revocation, then the revocation will be stayed (postponed) pending the hearing, pursuant to RCW 48.04.020. Upon receipt of your demand for hearing, you will be contacted by an assistant of the Chief Hearing Officer to schedule a teleconference with you and the Insurance Commissioner's Office to discuss the hearing

ORDER REVOKING LICENSES

No. D 06 - 179

Page 3

and the procedures to be followed.

Please send any demand for hearing to Insurance Commissioner, attention John Hamje, Deputy Insurance Commissioner, Office of the Insurance Commissioner, P.O. Box 40257, Olympia, WA 98504-0257.

ENTERED AT TUMWATER, WASHINGTON, this 3<sup>rd</sup> day of May, 2006.

MIKE KREIDLER  
Insurance Commissioner

By

  
JOHN F. HAMJE  
Deputy Insurance Commissioner  
Consumer Protection Division

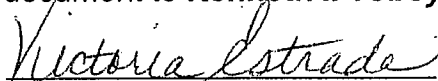
cc: Ken Combs, Investigator

**DECLARATION OF MAILING**

I certify under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery of a true copy of this document to **Kenneth I. Tobey, Inc..**

Dated: May 4, 2006

At Tumwater, Washington



Victoria Estrada

## NOTICE OF YOUR RIGHT TO A HEARING

You have the right to demand a hearing to contest this Order. During this hearing, you can present your argument that the Order should not have been entered for legal and/or factual reasons and/or to explain the circumstances surrounding the activities which are the subject of this Order. You may be represented by an attorney if you wish, although in some hearings before this agency parties do choose to represent themselves without an attorney.

Your Demand for Hearing should be sent to John F. Hamje, Deputy Insurance Commissioner, Office of the Insurance Commissioner, P.O. Box 40257, Olympia, WA 98504-0257, and must briefly state how you are harmed by this Order and why you disagree with it. You will then be notified both by telephone and in writing of the time and place of your hearing. If you have questions concerning filing a Demand for Hearing or the hearing process, please telephone the Hearings Unit, Office of the Insurance Commissioner, at 360/725-7002.

Your Demand for Hearing must be made within 90 days after the date of this Order, which is the date of mailing, or your Demand will be invalid and this Order will stand. If your Demand for Hearing is received before the effective date of this Order, the penalties contained in the Order will be stayed (postponed) until after your hearing.

It is important to know that if you demand a hearing, you will have two options for how it will be handled:

Option 1: Unless you specifically request Option 2, your hearing will be presided over by an administrative law judge from the Office of the Insurance Commissioner. Under this option, upon receipt of your Demand for Hearing, the Insurance Commissioner may refer the case to an administrative law judge. The administrative law judge is an individual who has not had any involvement with this case. The administrative law judge will hear and make the final decision in the case without any communication, input or review by the Insurance Commissioner or staff or any other individual who has knowledge of the case. This administrative law judge's final decision may uphold or reverse the Commissioner's action or may instead impose any penalties which are less than those contained in the Order.

Option 2: If you elect, your hearing will be presided over by an administrative law judge from the Office of Administrative Hearings. That administrative law judge will issue an initial or recommended decision which will then be sent to the Insurance Commissioner. The Insurance Commissioner, or his designee, will review the initial decision and make the final decision. The Insurance Commissioner's final decision in the case may uphold, reverse or modify the initial decision, thereby changing the penalty which is recommended in the initial decision. In writing the final decision, the Insurance Commissioner is not bound by the findings of facts or conclusions of law which were made in the initial decision.